

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Rates for Interstate Inmate Calling Services)	WC Docket No. 12-375
)	
_____)	

**GLOBAL TEL*LINK CORPORATION
REPLY COMMENTS ON PETITION FOR WAIVER**

Global Tel*Link Corporation (“GTL”),¹ by its undersigned counsel, respectfully submits these Reply Comments regarding its Petition for Waiver (“Petition”), which sought a temporary waiver of the June 20, 2016 deadline by which inmate calling service (“ICS”) providers must comply with Federal Communications Commission (“FCC”) Rules 64.6080 and 64.6090 for jails.² Since the filing of its Petition, GTL personnel have worked tirelessly to complete the renegotiation and contract modification process necessary to implement the rules and meet the June 20, 2016 deadline.³ While GTL’s waiver request is moot at this point, GTL files these Reply Comments to ensure a complete and accurate record.

GTL addresses the comments filed by the Wright Petitioners and the Human Rights Defense Center (“HRDC”), which unnecessarily pollute the record with unfounded and inflammatory accusations regarding GTL’s motives for filing its Petition. The *Second ICS Order* included provisions for ICS providers to seek waivers.⁴ Waivers generally exist to provide an

¹ This filing is made by GTL on behalf of itself and its wholly owned subsidiaries that also provide inmate calling services: DSI-ITI, LLC, Public Communications Services, Inc., and Value-Added Communications, Inc.

² WC Docket No. 12-375, *Wireline Competition Bureau Seeks Comment on Global Tel*Link Corporation’s Petition for Waiver of Deadline to Implement Rules 64.6080 and 64.6090 for Jails*, Public Notice, DA 16-631 (rel. June 7, 2016).

³ GTL Press Release, “GTL Commends Its Customers as ICS Marketplace Implements New FCC Rules for Jails” (June 20, 2016), *available at* <http://www.gtl.net/news/gtl-commends-its-customers-as-ics-marketplace-implements-new-fcc-rules-for-jails/>.

⁴ *Rates for Interstate Inmate Calling Services*, 30 FCC Rcd 12763, ¶ 217 (2015) (“*Second ICS Order*”).

opportunity for regulated entities to be vigilant about compliance.⁵ GTL's decision to file its Petition was based on its business judgment on that date that a sufficient degree of uncertainty existed as to whether it could complete renegotiation of all of its contracts with its jail correctional facility customers by the June 20, 2016 deadline.⁶ GTL acted consistent with the FCC's process for requesting a waiver,⁷ which was supported by law and the facts specific to GTL. The FCC's administrative processes exist for a reason, and GTL was well-within its rights to avail itself of those processes.⁸

The length of the contract renegotiation process is based on many factors, none of which are in GTL's control alone.⁹ The FCC itself recognized that the *Second ICS Order* may not trigger change-of-law provisions in every instance,¹⁰ and many correctional facilities took that view in light of the D.C. Circuit stay orders and the FCC's subsequent public notices.¹¹ GTL did

⁵ See, e.g., *American Telephone and Telegraph Company Petition for Limited Interim Waiver of Requirements of Third Computer Inquiry*, 5 FCC Rcd 5991, ¶ 11 (1990) ("the purpose of the waiver is to permit AT&T to comply with the Computer III requirements without a disruption in service"); see also *Newman v. Kelly*, 848 F. Supp. 228, 234 (D.D.C. 1994) ("The purpose of such waivers is to allow time for facilities in areas which may have a more difficult time attracting registered nurses to comply with the new requirements.").

⁶ Petition ¶¶ 5, 10.

⁷ *Second ICS Order* ¶ 217 (stating "the Commission's standard waiver process applies to ICS providers").

⁸ See, e.g., *Referral of Questions from General Communication Incorporated vs Alascom, Inc. in the United States District Court for the Western District of Washington*, 4 FCC Rcd 7447, ¶¶ 13, 15 (1988) ("The adoption of overly restrictive limitations, in whatever form, on a person's right to present this Commission with open and candid comments in the appropriate procedural context will almost certainly have a chilling effect on the open expression of views before this Commission, as well as other agencies, and may raise questions of constitutional propriety. Our administrative processes rely on and are built around this open exchange of information and points of view. . . . [the FCC] must also recognize [a carrier]'s right to file pleadings designed to protect its procedural or substantive rights."); see also *Eastern Railroad Presidents Conference et al. v. Noerr Motor Freight*, 365 U.S. 127, 139-40 (1961) ("A construction of the Sherman Act that would disqualify people from taking a public position on matters in which they are financially interested would thus deprive the government of a valuable source of information and, at the same time, deprive the people of their right to petition in the very instances in which that right may be of the most importance to them.").

⁹ Cf. Wright Petitioners at 3-4; HRDC at 2.

¹⁰ *Second ICS Order* ¶¶ 132, 204, 213.

¹¹ Petition ¶ 6.

not create the confusion and uncertainty resulting from these regulatory decisions,¹² and it is not free to dictate the terms of its correctional facility customer contracts. Rather, GTL engaged in good faith negotiations with its customers to reach a mutually beneficial result consistent with the requirements of the *Second ICS Order* as stayed, and the unique needs and interests of each individual correctional facility.

GTL's contracts with correctional facilities are individual case basis arrangements. It is the correctional facility customer's right to seek communication capabilities that meet the needs of inmates and the facility as part of any contract renegotiation required to address change-of-law issues.¹³ The FCC fully understood and appreciated that any revisions would be subject to the commercial contracting process; a process which had a direct bearing on GTL's waiver request.¹⁴ HRDC's criticism of contract amendments that include additional services and capabilities reflects a lack of understanding about the common workings of a commercial marketplace and fails to recognize that many of these additional products are *for the benefit of inmates* and "serve [the FCC's] goals for ICS reform."¹⁵

¹² Cf. Wright Petitioners at 3-4.

¹³ See, e.g., Comments of the Los Angeles County Sheriff's Department (LASD) at 4 (filed Jan. 15, 2016) ("We believe providing inmates advanced technological services and meaningful educational and vocational programs will help reduce recidivism."); Reply Comments of the National Sheriffs' Association at 4 (filed Feb. 8, 2016) (arguing sheriffs and correctional officers should be permitted "to experiment with these new technologies to determine whether they can be adopted for use in jails and correctional facilities"); see also Comments of Georgia Department of Corrections at 15 (filed Jan. 12, 2015) ("Correctional procurement is a specialized government function, often involving detailed and explicit acquisition procedures, regulations, and statutes mandated by state and local governments. . . . state and local correctional agencies award specialized contracts that reflect the needs of their inmates and staffs.").

¹⁴ *Second ICS Order* ¶ 256 ("According to NSA, 90 days is not enough time to allow providers to negotiate all of these contracts and for those contracts to be approved by the relevant authorities. . . . We agree that these parties raise valid concerns regarding the time needed to transition all of the country's jails to the new rate regime. Accordingly, we adopt a six-month transition period for jails, in order to give providers and jails enough time to negotiate (or renegotiate) contracts to the extent necessary to comply with all of the rules adopted herein.").

¹⁵ *Rates for Interstate Inmate Calling Services*, 29 FCC Rcd 13170, ¶ 145 (2014) ("*Second ICS FNPRM*").

In addition, GTL's Petition was not premised on any claim of "financial hardship."¹⁶ It was based on the time needed to renegotiate contracts and address intrastate rate regimes that might result in confiscatory rates once per-call/per-connection surcharges were removed.¹⁷ Pay Tel agreed such additional time was necessary, stating "that ICS providers need more time to work with regulators at the state level to try to bring state requirements into alignment with the Commission's rules."¹⁸

GTL's filing in Massachusetts is a prime example of this.¹⁹ The Massachusetts Department of Cable and Telecommunications ("DTC") previously established intrastate ICS rate caps that included a per-minute charge and a per-call surcharge.²⁰ Since 2011, the Massachusetts DTC has been conducting an adjudicatory proceeding regarding ICS matters.²¹ The DTC determined in 2013 that it would review the per-call surcharge as part of that proceeding, but would not review the per-minute rate.²² The *Second ICS Order* disrupted the Massachusetts DTC's ICS rate cap regime and the pending adjudicatory proceeding on ICS issues. After the issuance of the *Second ICS Order*, the Massachusetts DTC asked the parties to the adjudicatory proceeding to comment on how the FCC's decision and subsequent stay

¹⁶ Cf. Wright Petitioners at 7.

¹⁷ Petition ¶¶ 5, 10.

¹⁸ Pay Tel at 3.

¹⁹ Global Tel*Link Corporation Transmittal Letter and Letter of Explanation regarding changes to M.D.T.C. Tariff No. 2 (dated May 20, 2016) (proposing a restructured rate to permit GTL to continue to receive just and reasonable compensation for its provision of ICS in Massachusetts); *see also* Petition ¶ 12 (explaining that GTL had requested interim relief from the Massachusetts DTC).

²⁰ Petition ¶ 11.

²¹ D.T.C. 11-16, *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls*, Letter from Kalun Lee, Hearing (Mass D.T.C. Nov. 11, 2011) (initiating adjudicatory proceeding).

²² D.T.C. 11-16, *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls*, Hearing Officer Interlocutory Ruling (Mass D.T.C. Sept. 23, 2013).

decisions affected the issues to be reviewed.²³ GTL urged the Massachusetts DTC to close the adjudicatory proceeding as the *Second ICS Order* had addressed per-call surcharges and the other issues designated for review by the DTC in 2013. At the same time, however, GTL explained that review of the per-minute rate would be necessary to address the “unique costs” previously covered by the per-call surcharge that comprised the DTC’s ICS rate cap regime, and that such review should be conducted in a separate rulemaking, waiver, or tariff review proceeding.²⁴

Consistent with that position, GTL relied upon the tariff review process to request interim relief from the Massachusetts DTC to restructure GTL’s Massachusetts rates into a single per minute-of-use rate consistent with the *Second ICS Order*.²⁵ GTL’s Petition explicitly discussed its request for interim rate relief in Massachusetts.²⁶ GTL did not rely on the existence of the per-call surcharge in Massachusetts or the ongoing Massachusetts adjudicatory proceeding as “support” for its waiver request.²⁷ Rather, GTL cited Massachusetts as an example of a state where action would be necessary to address confiscatory rates after removal of the per-call surcharge under the FCC’s rules, and that additional time may be necessary to complete the state

²³ D.T.C. 11-16, *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls*, Notice of Briefing Schedule (Mass D.T.C. Mar. 18, 2016).

²⁴ D.T.C. 11-16, *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls*, Reply Brief of Global Tel*Link Corporation at 5 (Mass D.T.C. dated May 23, 2016) (“While GTL agrees with Securus and ICSolutions that there needs to be adjustments to Massachusetts’ per-minute usage cap in light of the elimination of the per-call surcharge, any such adjustment should occur as part of a generic rulemaking, through a waiver request, or during the tariff approval process.”).

²⁵ Global Tel*Link Corporation Transmittal Letter and Letter of Explanation regarding changes to M.D.T.C. Tariff No. 2 (dated May 20, 2016).

²⁶ Petition ¶ 12 (“To that end, GTL has requested interim relief from the Massachusetts DTC to restructure the combined per call, per minute rate elements that make-up the Massachusetts DTC ICS rate cap regulatory regime, into a single per minute-of-use rate cap consistent with the *Second ICS Order*.”); cf. Wright Petitioners at 10.

²⁷ Cf. Wright Petitioners at 10, 11.

review process.²⁸ The Massachusetts DTC took action on June 14, 2016, electing to implement the FCC's interim rate caps on an intrastate basis pending a broader investigation of ICS rates, which it in-turn stayed pending appeal of the *Second ICS Order* to the D.C. Circuit.²⁹

In conclusion, GTL was well-within its rights to avail itself of the FCC waiver process based on the circumstances that existed at the time of its filing. GTL's request was supported by the law and the facts presented. GTL has been successful in meeting the June 20, 2016 effective date for jails, which was impossible to predict when its waiver request was filed or prior to the initial comment deadline noticed for this matter. GTL hereby withdraws its request for waiver as moot.

Respectfully submitted,

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²⁸ Petition ¶ 11.

²⁹ D.T.C. 11-16, *Petition of Recipients of Collect Calls from Prisoners at Correctional Institutions in Massachusetts Seeking Relief from the Unjust and Unreasonable Cost of such Calls*, Interlocutory Order (Mass D.T.C. June 14, 2016). The intrastate rates in Massachusetts are no longer \$0.10 per minute as a result of the *Second ICS Order*; they are \$0.21 and \$0.25, consistent with the FCC interim rate caps.